Filed 1/21/20 P. v. Burks CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. JOSEPH BURKS, Defendant and Appellant.	D074599 (Super. Ct. No. SCD272955)

APPEAL from a judgment of the Superior Court of San Diego County, Charles G. Rogers, Judge. Affirmed.

Susan K. Shaler, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Michael P. Pulos and Joseph C. Anagnos, Deputy Attorneys General, for Plaintiff and Respondent.

I.

INTRODUCTION

A jury found Joseph Burks guilty of first degree murder (count 1) (Pen. Code, §§ 187, subd. (a), 189, subd. (a))[1] and found that Burks personally used a deadly or dangerous weapon during the commission of the murder, namely, a knife (§ 12022, subd. (b)(1)). The trial court sentenced Burks to prison for a determinate term of one year for the knife use enhancement, and a consecutive indeterminate term of 25 years to life for the murder. The court also imposed certain fees, including a $40 court security fee (§ 1465.8) and a $30 court operations fee (Gov. Code, § 70373), and a $10,000 restitution fine.

On appeal, Burks claims that he is entitled to a remand to allow the trial court to determine whether to place him on mental health diversion pursuant to a statute that became effective after the jury rendered its verdict (former section § 1001.36).[2] Burks also claims that the court erred in imposing the $40 court security fee (§ 1465.8), the $30 court operations fee (Gov. Code, § 70373), and the $10,000 restitution fine without first determining his ability to pay.

---

1 Unless otherwise specified, all subsequent statutory references are to the Penal Code.

2 (Stats. 2018, ch. 34, § 24, eff. June 27, 2018.) Former section 1001.36 was subsequently amended by way of a second statute, also adopted in 2018. (Stats. 2018, ch. 1005, § 1, eff. Jan. 1, 2019.) All references to "former section 1001.36" are to the version of the statute that became effective on June 27, 2018.

We conclude that Burks is ineligible for diversion due to an amendment to section 1001.36 that became effective January 1, 2019, and further conclude that, contrary to Burks's contentions, to apply that amendment to Burks neither violates the *Estrada* rule[3] nor constitutes an impermissible ex post facto application of the law. We further conclude that Burks forfeited his claim with respect to the court's imposition of the fees and the restitution fine. Accordingly, we affirm the judgment.

II.

FACTUAL BACKGROUND

Joseph Burks, who was 30 years old at the time of the relevant events, lived with his mother, Angela Burks (Angela). On July 18, 2017, Burks purchased a Taser, a type of stun gun. Approximately one week later, Burks stabbed Angela 18 times, primarily in the neck, killing her. Angela had an injury below her right ear that a medical examiner testified was "consistent" with having been inflicted by the prongs of the Taser.

III.

DISCUSSION

A. *Burks is ineligible for mental health diversion*

Burks contends that he is entitled to a remand to allow the trial court to determine whether to place him on mental health diversion under former section 1001.36. The

---

3 (*In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*).) " 'The *Estrada* rule rests on an inference that, in the absence of contrary indications, a legislative body ordinarily intends for ameliorative changes to the criminal law to extend as broadly as possible, distinguishing only as necessary between sentences that are final and sentences that are not.' " (*People v. Superior Court* (*Lara*) (2018) 4 Cal.5th 299, 308 (*Lara*).)

People maintain that Burks is not entitled to a remand because section 1001.36 has been amended to exclude defendants, such as Burks, who have been charged with murder. (See § 1001.36, subd. (b)(2)(A), added by Stats. 2018, ch. 1005, § 1, eff. Jan. 1, 2019.)

Burks claims that under *Estrada*, he should enjoy the benefit of the former version of section 1001.36, which did not exclude defendants who were charged with murder. Burks also contends that to apply the amended version of section 1001.36 to his case would constitute an ex post facto violation. Burks's claims raise questions of law to which we apply the de novo standard of review. (See, e.g., *People v. Whaley* (2008) 160 Cal.App.4th 779.)

1. *Procedural background*

In July 2017, the People charged Burks with murder. The People alleged that Burks committed the murder on or about July 24, 2017.

The jury found Burks guilty of murder on June 11, 2018.

On June 27, 2018, the Legislature enacted former section 1001.36, which established a program of pretrial diversion for defendants with mental disorders.

In August 2018, the trial court sentenced Burks to a term of 26 years to life in prison.[4] That same month, Burks filed a notice of appeal.

In September 2018, the Legislature amended section 1001.36 to exclude defendants who have been charged with certain offenses, including murder, from being

---

4 The People do not contend that Burks forfeited his claim on appeal by failing to request diversion at sentencing. Thus, we express no opinion with respect to this issue.

placed into a diversion program. (See Stats. 2018, ch. 1005, § 1.) The amended statute became effective January 1, 2019.

2. *Governing law*

a. *Diversion*

Sections 1001.35 and 1001.36 authorize pretrial diversion for some defendants with mental disorders. Section 1001.35 identifies the purpose of the program and provides as follows:

> "The purpose of this chapter is to promote all of the following:
>
> "(a) Increased diversion of individuals with mental disorders to mitigate the individuals' entry and reentry into the criminal justice system while protecting public safety.
>
> "(b) Allowing local discretion and flexibility for counties in the development and implementation of diversion for individuals with mental disorders across a continuum of care settings.
>
> "(c) Providing diversion that meets the unique mental health treatment and support needs of individuals with mental disorders."

Section 1001.36 establishes the program. Section 1001.36, subdivision (c) defines "pretrial diversion" as "the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment . . . ." (§ 1001.36, subd. (c).)

A court may grant pretrial diversion under section 1001.36 if the court finds that: (1) the defendant suffers from an identified mental disorder; (2) the mental disorder played a significant role in the commission of the charged offense; (3) in the opinion of a

qualified mental health expert, the defendant's symptoms will respond to treatment; (4) the defendant consents to diversion and the defendant waives his or her speedy trial rights; (5) the defendant agrees to comply with treatment; and (6) the defendant will not pose an unreasonable risk of danger to public safety, as defined in section 1170.18, if the defendant is treated in the community. (§ 1001.36, subd. (b)(1)(A)–(F).)

If the court grants pretrial diversion, "[t]he defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources" for "no longer than two years." (§ 1001.36, subds. (c)(1)(B) & (c)(3).) If the defendant performs "satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion." (§ 1001.36, subd. (e).)

As initially enacted in June 2018, former section 1001.36 did not exclude defendants charged with certain offenses, including murder, from being placed in diversion. However, in September 2018, the Legislature amended section 1001.36 to exclude such defendants. (See § 1001.36, subd. (b)(2)(A), added by Stats. 2018, ch. 1005, § 1, eff. Jan. 1, 2019.)

Section 1001.36, subdivision (b)(2) provides in relevant part:

> "A defendant may not be placed into a diversion program, pursuant to this section, for the following current charged offenses:
>
> "(A) Murder . . . ."

The amended statute became effective January 1, 2019.

3. *Burks is not entitled to a remand to permit the trial court to consider whether to place him into a diversion program pursuant to former section 1001.36*

Burks acknowledges that "[b]y its current terms, with the latest amendments[,] section 1001.36 would exclude [appellant]." However, Burks argues that he is entitled to a remand so that the trial court may determine whether to place him into a diversion program pursuant to the *former* version of section 1001.36 (Stats. 2018, ch. 34, § 24, eff. June 27, 2018) pursuant to the "*Estrada* rule."

Under *Estrada*, "[w]hen the Legislature amends a statute so as to lessen the punishment it has obviously expressly determined that its former penalty was too severe and that a lighter punishment is proper as punishment for the commission of the prohibited act. It is an inevitable inference that the Legislature must have intended that the new statute imposing the new lighter penalty now deemed to be sufficient should apply to every case to which it constitutionally could apply. . . . This intent seems obvious, because to hold otherwise would be to conclude that the Legislature was motivated by a desire for vengeance, a conclusion not permitted in view of modern theories of penology." (*Estrada*, *supra,* 63 Cal.2d at p. 745.)

Section 1001.36 can be said to work an ameliorative change to the law in that it has the effect of potentially lessening the punishment for an offense by providing a defendant the possibility of being placed into a diversion program and having the criminal charges dismissed upon successful completion of a diversion program. Accordingly, we assume, strictly for purposes of this decision, that the *Estrada* rule applies to section 1001.36, *for those defendants who remain potentially eligible for*

diversion after the September 2018 amendments to the statute.[5] (See *People v. Frahs* (2018) 27 Cal.App.5th 784, 791 (*Frahs*), review granted Dec. 27, 2018, S252220 [concluding that former section 1001.36 applies retroactively to defendant whose case was pending on appeal at time of enactment of the statute]; but see *People v. Craine* (2019) 35 Cal.App.5th 744 (*Craine*), review granted Sept. 11, 2019, S256671 [disagreeing with *Frahs*].)[6]

However, Burks asks that we direct the trial court to apply former section 1001.36 retroactively under *Estrada* to a defendant whom the Legislature has subsequently made *ineligible* for diversion by way of the September 2018 amendments to the statute. In order for us to apply *Estrada* in such a fashion, we would have to infer that the Legislature determined that the punishment prescribed for the crime of murder for a defendant such as Burks was too severe a penalty, and that to continue to apply such a rule in his nonfinal case would be an act of vengeance. Yet, the 2018 amendments to section 1001.36 foreclose that inference since the amendments specifically *exclude* defendants such as Burks from the mental health diversion program. We may therefore infer that the Legislature did *not* consider the exclusion of such defendants from diversion to be too severe a punishment. In fact, that is exactly what the Legislature intends. Accordingly, we conclude that the *Estrada* rule does not compel the retroactive

---

5 (Stats. 2018, ch. 1005, § 1, eff. Jan. 1, 2019.)

6 Neither *Frahs* nor *Craine* considered the effect of the September 2018 amendments on a defendant rendered ineligible for diversion by way of those amendments.

application of former section 1001.36. (See *In re M.S.* (2019) 32 Cal.App.5th 1177, 1191 [concluding that principles underlying *Estrada* did apply so as to make pretrial diversion under former § 1001.36 available to a juvenile, found to have committed murder, whose appeal was pending after statute was amended to exclude defendants charged with murder].)

4. *Applying the amended version of section 1001.36 does not violate ex post facto principles*

Burks claims that to apply the amended version of section 1001.36 to him would violate the ex post facto clauses of the state and federal constitutions. (Cal. Const., art. I, § 9; U.S. Const., art. I, §§ 9, 10.)

In *People v. Cawkwell* (2019) 34 Cal.App.5th 1048, review granted Aug. 14, 2019, S256113) (*Cawkwell*),[7] this court rejected a nearly identical claim with respect to a defendant rendered ineligible for diversion by way of the September 2018 amendments to section 1001.36. The *Cawkwell* court first outlined the relevant constitutional principles:

> " 'A statute violates the prohibition against ex post facto laws if it punishes as a crime an act that was innocent when done or increases the punishment for a crime after it is committed.' [Citation.] The ex post facto prohibition ensures that people are given 'fair warning' of the punishment to which they may be subjected if they violate the law; they can rely on the meaning of the statute until it is explicitly changed. " (*Cawkwell*, *supra*, at p. 1054.)

---

7 In granting review, the Supreme Court stated the following, "Further action in this matter is deferred pending consideration and disposition of a related issue in *People v. Frahs*, S252220 (see Cal. Rules of court, rule 8.512(d)(2)), or pending further order of the court." (*People v. Cawkwell* (Aug. 14, 2019, No. S256113).)

Applying these principles to the defendant in that case, the *Cawkwell* court stated:

> "When Cawkwell [committed his offenses] between November 2015 and April 2016, the possibility of pretrial mental health diversion did not exist. The initial version of section 1001.36 was not enacted until more than two years later, in June 2018. Consequently, Cawkwell could not have relied on the possibility of receiving pretrial mental health diversion when he [committed his offenses].
>
> "Moreover, the Legislature's amendment of section 1001.36 to eliminate eligibility for defendants charged with sex offenses[8] did not make an act unlawful that was not formerly unlawful, nor did it increase the punishment for the offenses with which Cawkwell was charged. [Citation.] That is, Cawkwell was subject to the same punishment when he committed his offenses as he was after the Legislature narrowed the scope of defendants eligible for diversion. Thus, the amendment does not violate the ex post facto clauses of the state or federal Constitutions, and Cawkwell is ineligible for mental health diversion." (*Cawkwell*, *supra*, 34 Cal.App.5th at p. 1054.)

The same circumstances apply in principle with respect to Burks. When Burks committed murder in July 2017, "the possibility of pretrial mental health diversion did not exist," and thus, Burks "could not have relied on the possibility of receiving pretrial mental health diversion," in committing the offense. (*Cawkwell*, *supra*, 34 Cal.App.5th at p. 1054.) In addition, the Legislature's elimination of eligibility for diversion for defendants charged with murder did not make an act unlawful that was formerly lawful.

---

8 Cawkwell was "was charged with one count each of communicating with a minor with the intent to commit a sex offense (§ 288.3, subd. (a)) and annoying or molesting a child (§ 647.6, subd. (a))." (*Cawkwell*, *supra*, 34 Cal.App.5th at p. 1052.) The *Cawkwell* court explained that the "Legislature amended the diversion scheme to eliminate eligibility for defendants charged with (as relevant here) offenses that require registration under section 290." (*Id.* at p. 1050.)

(*Ibid.*) Further, Burks "was subject to the same punishment when he committed his offenses as he was after the Legislature narrowed the scope of defendants eligible for diversion." (*Ibid.*)

Burks's attempts to distinguish *Cawkwell* are unpersuasive. First, Burks claims that "[t]he *Lara* rationale" (i.e., the *Estrada* rule)[9] applies to former section 1001.36. We reject that argument for the reasons stated in part III.A.3, *ante*.

Next, Burks claims that "whether a defendant knew of, and relied on, pending or future, ameliorative legislation at the time she committed offenses is not relevant to whether the legislation applies to her." Instead, Burks claims that "[t]he question is analyzed under [*Lara*]," which "looks to whether the effect of the legislation is ameliorative." This argument conflates Burks's ex post facto argument with his statutory interpretation argument under *Lara* and *Estrada*. As the *Cawkwell* court explained, "The ex post facto prohibition ensures that people . . . can *rely on the meaning of the statute* until it is explicitly changed." (*Cawkwell*, *supra*, 34 Cal.App.5th at p. 1054, italics added.) Thus, contrary to Burks's contention, the fact that he could not possibly have relied on former section 1001.36 in committing the murder clearly undermines his ex post facto claim.

Third, Burks notes that the ameliorative provisions of former section 1001.36 became effective while Burks was awaiting sentencing, while former section 1001.36

---

9 In *Lara*, the California Supreme Court applied the *Estrada* rule in concluding that Proposition 57, which "prohibits prosecutors from charging juveniles with crimes directly in adult court," applies retroactively. (*Lara*, *supra*, 4 Cal.5th at p. 303.)

became effective after Cawkwell was sentenced. However, Burks fails to explain why this distinction has any significance for purposes of an ex post facto claim, and we perceive none. A law may violate ex post facto principles if the statute " 'punishes as a crime an act that was innocent *when done* or increases the punishment for a crime after it is *committed*.' " (*Cawkwell*, *supra*, 34 Cal.App.5th at p. 1054.) Burks and Cawkwell are similarly situated in this respect in that former section 1001.36 became effective *after* each defendant's commission of the acts for which they are being punished.

Finally, Burks claims that to apply section 1001.36 to him would be impermissible because it "increased his punishment by eliminating the opportunity for diversion." We are unpersuaded. Applying section 1001.36 to Burks would not increase his punishment above that which existed at the time of Burks's commission of the murder. Thus, the amendment eliminating Burks's eligibility for diversion does not constitute an ex post facto law.

Accordingly, we conclude that Burks is not entitled to a remand to permit the trial court to determine whether to place him on mental health diversion under former section 1001.36.[10]

---

10 In light of our conclusion, we need not consider whether the record contains evidence that Burks suffers from a qualifying mental disorder and/or evidence of any of the other "threshold requirements" for diversion sufficient to warrant a remand. (*Frahs*, *supra*, 27 Cal.App.5th at p. 791 [concluding that a remand was appropriate to permit trial court to consider whether to place defendant in diversion where "the record affirmatively discloses that [the defendant] appears to meet at least one of the threshold requirements"].)

B. *Burks forfeited his claim that the imposition of certain fees and a restitution fine violated his constitutional rights*

Burks claims that the trial court erred in imposing a $40 court security fee (§ 1465.8), a $30 court operations fee (Gov. Code, § 70373), and a $10,000 restitution fine without first determining his ability to pay these amounts. He contends that these fees and the restitution fine may be "imposed . . . constitutional[ly] only if the court has made a finding [that] the defendant has the ability to pay." (Citing *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*) [see *id.* at p. 1160 ["Because the only reason Dueñas cannot pay the [restitution] fine and [court facilities and court operations] fees is her poverty, using the criminal process to collect a fine she cannot pay is unconstitutional"].)

1. *Factual and procedural background*

The probation report recommended that the trial court impose a $10,000 restitution fine (§ 1202.4, subd. (b)) and that the court impose, and stay, a corresponding $10,000 parole restitution revocation fine. (§ 1202.45.)

The probation report also recommended that the court impose a $40 court security fee (§ 1465.8), a $30 court operations fee (Gov. Code, § 70373) and a $154 criminal justice administration fee (Gov. Code, § 29550.1). In addition, the probation report recommended that Burks be ordered to pay restitution in the amount of $7,491.50 (§ 1202.4, subd. (f)), subject to further potential modification.

At sentencing, the court imposed the recommended fees, fine, and restitution, with one exception. With respect to the criminal justice administration fee, the court stated the following:

> "The court has the discretion not to impose that if the Court finds no ability to pay. I do find no ability to pay that fee. And I would like any funds that might be available from this man's employment, if any, while in the Department of Corrections to be available for actual restitution."

Burks raised no objection with respect to the trial court's imposition of fees, fines, or restitution prior to sentencing or at the sentencing hearing.

2. *Application*

Ordinarily, a defendant who fails to object to the imposition of a fee or fine in the trial court may not raise a claim pertaining to that charge on appeal. (See, e.g., *People v. Aguilar* (2015) 60 Cal.4th 862, 864 [appellate forfeiture rule applies to probation fines and attorney fees imposed at sentencing]; *People v. McCullough* (2013) 56 Cal.4th 589, 596–598 [defendant forfeits appellate challenge to the sufficiency of evidence supporting a Gov. Code, § 29550.2, subd. (a) booking fee if objection not made in the trial court]; *People v. Nelson* (2011) 51 Cal.4th 198, 227 (*Nelson*) [claim that trial court erroneously failed to consider ability to pay a restitution fine forfeited by the failure to object].)

Burks argues that "[t]he issue is cognizable . . . even though [he] did not object at trial." He offers two arguments in support of this contention. First, he notes that a challenge to an unauthorized sentence may be corrected even without an objection in the trial court. He maintains that the trial court's imposition of the fees and restitution fine without a determination of his ability to pay constitutes an unauthorized sentence. We

disagree that the trial court's imposition of these fees and the restitution fine constitutes an unauthorized sentence. The trial court was not required to consider sua sponte Burks's ability to pay prior to imposing the fees and restitution fine. (See *People v. Castellano* (2019) 33 Cal.App.5th 485 (*Castellano*).) The *Castellano* court explained:

> "Castellano asserts the court facilities and operations assessments and the criminal laboratory analysis fee should be reversed, and execution of the restitution fine stayed, unless and until the People prove he has the present ability to pay the fine. *Dueñas* does not support that conclusion *in the absence of evidence in the record of a defendant's inability to pay*. . . . [¶] Consistent with *Dueñas*, *a defendant must in the first instance contest in the trial court his or her ability to pay the fines*, fees and assessments to be imposed and at a hearing present evidence of his or her inability to pay the amounts contemplated by the trial court." (*Id.* at pp. 489–490, italics added.)[11]

Thus, pursuant to *Dueñas*, as clarified by *Castellano*, a defendant must raise the issue of his claimed inability to pay a fee or restitution fine in the trial court. (See also *People v. Kopp* (2019) 38 Cal.App.5th 47, 96, review granted Nov. 13, 2019, S257844 ["it is [defendants'] burden to make a record below as to their ability to pay these assessments"].) Accordingly, the trial court's imposition of fees and a restitution fine without a determination of Burks's ability to pay does not constitute an unauthorized sentence.

Second, Burks claims that he should be excused from having failed to raise an objection in the trial court because any such objection would have been futile in light of

---

11 *Castellano* and *Dueñas* were both decided by the Court of Appeal, Second Appellate District, Division Seven. (*Castellano, supra,* 33 Cal.App.5th 485; *Dueñas, supra,* 30 Cal.App.5th 1157.)

the state of the law prior to *Dueñas*. We acknowledge the split of authority with respect to how unforeseeable *Dueñas* may have been, and whether the novelty of that decision may serve as the basis for excusing a defendant's failure to object in *any* case. (Compare, e.g., *Castellano, supra*, 33 Cal.App.5th at p. 489 [*Dueñas* was "a newly announced constitutional principle that could not reasonably have been anticipated at the time of trial" and declining to apply the forfeiture doctrine to defendant's challenge to assessments and restitution fine] with *People v. Frandsen* (2019) 33 Cal.App.5th 1126, 1154 [concluding that defendant forfeited challenge to assessments and restitution fine and stating "we disagree . . . [that] *Dueñas* was 'a dramatic and unforeseen change in the law' "].)

However, in *this* case, irrespective of the novelty of the principles announced in *Dueñas*, it cannot be said that there was no basis for failing to object to the trial court's imposition of a $10,000 restitution fine on the basis of Burks's purported inability to pay. On the contrary, at the time of sentencing, well established statutory law specifically authorized a trial court to consider a defendant's "inability to pay" any restitution fine above the statutory minimum. (See § 1202.4, subd. (d).) Section 1202.4, subdivision (d) provides in relevant part:

> "In setting the amount of the fine pursuant to subdivision (b) in excess of the minimum fine pursuant to paragraph (1) of subdivision (b), the court shall consider any relevant factors, including, but not limited to, the *defendant's inability to pay* . . . . Consideration of a defendant's inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required."

Thus, if Burks had believed that the trial court had failed to give adequate consideration to his ability to pay the $10,000 restitution fine, it was incumbent on him to raise this objection at the sentencing hearing.[12] His failure to do so resulted in the forfeiture of his challenge to the trial court's imposition of the restitution fine. (*Nelson*, *supra*, 51 Cal.4th at p. 227.) Further, since Burks raised no objection to the imposition of a *$10,000* restitution fine on the ground that he lacked an ability to pay such a fine, notwithstanding clearly established statutory authorization for raising a challenge to all portions of that fine above the $300 minimum[13] (§ 1202.4, subd. (d)), we see no basis for excusing his failure to object to fees totaling $*70* on the basis that he is unable to pay those fees or that he is unable to pay *$300* of the restitution fine. (See *People v. Gutierrez* (2019) 35 Cal.App.5th 1027, 1033 [employing similar reasoning].)

Our conclusion that Burks forfeited his objection is not altered by the fact that the trial court found, sua sponte, that Burks was not able to pay a $154 criminal justice administration fee.[14] The trial court's sua sponte ruling, unprompted by any argument

---

12 As noted, in part III.B.1, *ante*, the probation report recommended that the trial court impose the $10,000 restitution fine.

13 (See § 1202.4, subd. (b)(1) [setting minimum restitution fine for person convicted of a felony as $300].)

14 As noted in part III.B.1, *ante*, in finding that Burks was unable to pay the criminal justice administration fee, the trial court stated, "And I would like any funds that might be available from this man's employment, if any, while in the Department of Corrections to be available for actual restitution." We emphasize that we express no opinion with respect to whether, on the merits, the court would have employed similar reasoning to strike the $70 in fees or the $10,000 restitution fine.

from Burks, does not provide a compelling basis for exercising our discretion to excuse Burks's forfeiture to remand the matter for further proceedings.[15]

Accordingly, we conclude that Burks has forfeited his claim that the trial court erred in imposing the court operations and criminal conviction fees and a $10,000 restitution fine without first determining his ability to pay them.

IV.

DISPOSITION

The judgment is affirmed.

AARON, J.

WE CONCUR:

HUFFMAN, Acting P. J.

HALLER, J.

---

15 While Burks makes reference to the trial court's ruling on the criminal justice administration fee in his brief, he does not present any argument that the court's ruling in this regard is relevant to the issue of forfeiture.